



# Executive Summary

In Washington State, forest practices are regulated through the Department of Natural Resources Forest Practices program by means of the Forest Practices Act, established by the legislature, and the rules established by the Washington Forest Practices Board (the Board). The Board is charged with creating rules to protect the state's public resources while maintaining a viable timber industry. The Forest Practices Act applies to about 9.1 million acres of primarily non-Federal and non-tribal forestland, many of which contain habitat for aquatic and riparian-dependent species that have been listed (or may be listed in the future) under the Federal Endangered Species Act (ESA).

The forest practices rules—and the Forest Practices program as a whole—require the maintenance and restoration of aquatic and riparian habitat. As a result, this Forest Practices Habitat Conservation Plan (FPHCP) asserts that the rules and the program are a means of meeting the requirements of the ESA, as well as those of the Federal Clean Water Act (CWA).

Through the FPHCP, the state of Washington seeks to provide long-term conservation of covered species, support an economically viable timber industry and create regulatory stability for landowners.

## Background

In 1999, the state legislature directed the Washington Forest Practices Board to adopt rules that were consistent with the recommendations of the *Forests and Fish Report* (FFR), a multi-stakeholder effort to improve forest practices and the protection of aquatic and riparian habitat on forestlands regulated under the state's Forest Practices Act and rules. The authors of the FFR include state and Federal agencies, counties, the governor's office, forest landowners and tribes.

In July 2001, the Board adopted what are commonly referred to as the “Forests and Fish Rules”—sweeping changes to the forest practices rules based on FFR recommendations.

The FFR had been developed in response to listings of several species of Pacific salmon under the Federal Endangered Species Act as well as the continued listing of surface waters on the Federal Clean Water Act 303(d) list. To address these issues, the FFR recommended modifying existing forest practices statutes and rules related to:

- The protection of riparian areas, unstable slopes and wetlands;
- The construction, maintenance and abandonment of forest roads;
- The application of forest chemicals; and
- The implementation of watershed analysis.

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The report also recommended administrative changes to the Forest Practices program, including: developing alternate management plans, providing assistance to small forest landowners, revising the forest practices application process, modifying enforcement procedures and creating and implementing an effective adaptive management program.

The FFR had four goals:

- 1) To provide compliance with the Endangered Species Act for aquatic and riparian-dependent species on non-Federal forestlands;
- 2) To restore and maintain riparian habitat on non-Federal forestlands to support a harvestable supply of fish;
- 3) To meet the requirements of the Clean Water Act for water quality on non-Federal forestlands; and
- 4) To keep the timber industry economically viable in the state of Washington.

To meet the first of these four goals, the FFR recommended that the United States Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) (collectively referred to as the Services) approve the Forests and Fish Rules as meeting ESA requirements for the protection of threatened and/or endangered species. Approval would take the form of a rule limit under Section 4(d) of the ESA (commonly called a 4(d) rule) for threatened species, or as a habitat conservation plan under Section 10 of the ESA for threatened, endangered and unlisted species.

In response to this recommendation, the Washington Department of Natural Resources (DNR) established the Federal Assurances Project in July 2001 to initiate and coordinate the ESA compliance effort on behalf of the state of Washington. This document, the Forest Practices Habitat Conservation Plan (FPHCP), is part of the state's application to gain ESA compliance through Section 10 of the ESA, and is intended to implement the goals stated in the Forests and Fish Report as they relate to forest practices regulated by the state. In addition to the all-encompassing FFR goals, the FPHCP utilizes more specific performance goals, resource objectives and performance targets that are described in more detail in Chapters 1 and 4.

The state is seeking Incidental Take Permits (ITPs) from the Services for a period of 50 years. The state intends to protect aquatic and riparian-dependent species to the maximum extent practicable consistent with maintaining commercial forest management as an economically viable use of forestlands. Issuance of the ITPs and implementation of the FPHCP would provide a regulatory climate and structure more likely to keep landowners from converting forestlands to other uses that would be less desirable for salmon recovery.

## **Activities Covered by the FPHCP**

Forest practices can affect the quantity and quality of aquatic and riparian habitat by altering physical watershed processes such as erosion, large wood recruitment, shade and hydrology. Timber harvesting and road construction and maintenance have the greatest

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potential for modifying habitat conditions, including migratory pathways, although other forest practices activities may also have negative effects.

Forest practices activities covered by the FPHCP include road and skid trail construction, road maintenance and abandonment, final and intermediate harvesting, pre-commercial thinning, reforestation, salvage of trees and brush control. In addition, adaptive management research and monitoring activities—some of which include experimental treatments—are also covered by the plan. The FPHCP includes protection measures to monitor, minimize and mitigate any impacts caused by these activities (see Chapter 4).

## **Lands Covered by the FPHCP**

The FPHCP covers approximately 9.1 million acres of forestland in Washington, about 6.1 million acres of which are located west of the crest of the Cascade Range, and approximately 3 million acres are in eastern Washington. Ownership patterns range from individuals and families who own small forest parcels to large holdings owned and/or managed by private corporations and public agencies.

Covered lands are forestlands within the state of Washington subject to the Washington Forest Practices Act, chapter 76.09 RCW. Forestland means “all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing” (RCW 76.09.010(9)). For purposes of road maintenance and abandonment planning and implementation for small forest landowners, “forestland” does not include residential home sites, cropfields, orchards, vineyards, pastures, feedlots, fish pens and land that contains facilities necessary for the production, preparation or sale of crops, fruit, dairy products, fish and livestock.

Approximately 9.1 million acres of forestlands are covered lands; this primarily includes private and state forestlands, although local government forestlands are also covered by the Forest Practices Habitat Conservation Plan. Forestlands covered by existing Federally approved habitat conservation plans are generally not considered part of FPHCP covered lands (WAC 222-12-041). However, there are two exceptions. One is the Boise Cascade single-species habitat conservation plan that encompasses 620 acres and provides coverage for the northern spotted owl, but does not include coverage for aquatic species. The other is approximately 228,000 acres of DNR managed land on the east side of the Cascade crest. The DNR State Lands HCP provides coverage for terrestrial species in this area, but does not include coverage for aquatic species. The forestland contained within these two areas is considered covered lands under the FPHCP.

## **Species Covered by the FPHCP**

The FPHCP provides measures to minimize and mitigate the incidental take of five federally listed fish species that comprise 17 separate aggregations of populations<sup>1</sup>.

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<sup>1</sup> As used here, “aggregations of populations” refers to the NOAA Fisheries designation of “evolutionarily significant unit” (ESU) for anadromous fish species and the United States Fish and Wildlife Service designation of “distinct population segment” (DPS) for resident fish species.

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Listed fish species include:

- Six aggregations of chinook salmon<sup>2</sup> (*Oncorhynchus tshawytscha*),
- Two aggregations of chum salmon<sup>3</sup> (*O. keta*),
- Two aggregations of sockeye salmon<sup>4</sup> (*O. nerka*),
- Five aggregations of steelhead trout<sup>5</sup> (*O. mykiss*), and
- Two aggregations of bull trout<sup>6</sup> (*Salvelinus confluentus*).

The FPHCP conserves habitat for these species—including any unlisted aggregations of these species—and for 48 other fish and 7 amphibian species. Therefore, the state of Washington seeks take coverage under the ESA for listed species; for unlisted species, the state seeks coverage should any of these species become listed in the future.

## The Forest Practices Habitat Conservation Plan

Given the geographic scope of lands covered by the Forest Practices Act and rules, the large number of landowners involved, the multiple species for which coverage is being sought, and the regulatory nature of the planning effort, the state has developed the FPHCP as a programmatic plan. Whereas most habitat conservation plans approved to date are agreements between the Federal government and an individual landowner, the programmatic nature of the FPHCP provides ESA coverage for forest landowners through the state's Forest Practices program. Forest landowners comply with the ESA by conducting forest practices activities according to Washington's Forest Practices Act and rules, and therefore become beneficiaries of take coverage.

The Forest Practices program includes state statutes and rules that govern forest practices activities in Washington, as well as the public and private agencies and organizations that work cooperatively to administer the program throughout the state. While the Forest Practices program includes both the regulatory and collaborative dimensions (as described below), within the scope of the FPHCP, forest landowners comply with the ESA by conducting forest practices activities (as described in Chapter 2) according to Washington's Forest Practices Act and rules for the protection of covered species.

The FPHCP consists of two parts: an administrative framework and a set of protection measures.

The *administrative framework* supports the development, implementation and refinement of the state's Forest Practices program. Its participants include the Forest Practices Board, the Department of Natural Resources, the Forest Practices Appeals Board, forest

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<sup>2</sup> Upper Columbia River Spring Run ESU (endangered), Puget Sound ESU (threatened), Lower Columbia River ESU (threatened), Upper Willamette River ESU (threatened), Snake River Spring/Summer Run ESU (threatened), Snake River Fall Run ESU (threatened),

<sup>3</sup> Columbia River ESU (threatened), Hood Canal Summer Run ESU (threatened)

<sup>4</sup> Snake River ESU (endangered), Ozette Lake ESU (threatened)

<sup>5</sup> Upper Columbia River ESU (endangered), Middle Columbia River ESU (threatened), Lower Columbia River ESU (threatened), Snake River ESU (threatened), Upper Willamette River ESU (threatened)

<sup>6</sup> Columbia River DPS (threatened), Coastal-Puget Sound DPS (threatened)

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landowners, cooperating agencies and organizations, and the general public. Each participant has a role in developing, implementing and/or refining the Forest Practices program, and participants often work collaboratively on many aspects of program administration.

Program development includes the creation of new forest practices rules and guidance. Program implementation includes administration of the forest practices permitting process, performing compliance monitoring, taking enforcement actions and providing training and technical support. Program refinement occurs through an adaptive management process. Because there is some uncertainty associated with the effectiveness of many protection measures, adaptive management research and monitoring is a cornerstone of the FPHCP. Adaptive Management is designed to assess the effectiveness of the protection measures in achieving established resource objectives. It also includes programs to monitor the status and trends of key environmental parameters and to evaluate watershed-scale cumulative effects.

*Protection measures* include state forest practices laws, rules and guidance designed to minimize and mitigate forestry-related impacts and conserve habitat for species covered by the plan. The protection measures determine the level of on-the-ground habitat protection for covered species. They are presented as two separate but interrelated conservation strategies:

The first is the *Riparian Conservation Strategy*. It includes protection measures implemented in and adjacent to surface waters and wetlands. Examples include wetland and water typing systems, channel migration zones, wetland and riparian management zones and equipment limitation zones. These measures are designed to provide adequate levels of large wood recruitment and shade, and to limit excess fine sediment delivery to surface waters and wetlands.

The second is the *Upland Conservation Strategy*. It includes measures that protect the habitats of covered species by minimizing and mitigating upslope forest practices impacts. This strategy includes protection measures related to unstable slopes, road construction, maintenance, and abandonment, fish passage at road crossings, and rain-on-snow hydrology. These measures are intended to limit excess coarse and fine sediment delivery to surface waters and wetlands, and to maintain hydrologic regimes. In cases where roads have altered hydrologic regimes, protection measures are also designed to restore hydrologic flowpaths.

## **Alternatives Analyzed**

Section 10 of the ESA provides a mechanism through which an applicant may be allowed to incidentally take a listed species when a habitat conservation plan for the species is prepared by the applicant and approved by the Federal government. The FPHCP is part of an application, submitted by the state of Washington to USFWS and NOAA Fisheries, to obtain authorization for the incidental take of aquatic species under Section 10 of the ESA. If approved, authorization would come in the form of an “Incidental Take Permit” (ITP), issued by each Federal agency for the species under their jurisdiction.

The issuance of an ITP is a Federal action subject to National Environmental Policy Act (NEPA) requirements. NEPA requires full public disclosure and analysis of the

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environmental impacts of proposed Federal actions with the potential to significantly affect the quality of the human environment. An Environmental Impact Statement was prepared to analyze the proposed action for its impact on the environment and a range of reasonable alternatives to the proposed action. The FPHCP is referred to as *Alternative 2* of four alternatives that were considered.

The following is a summary of the other alternatives and the reasons each was not selected.

## **ALTERNATIVE 1 (NO-ACTION)**

Under the No-Action alternative, the Services would not issue take authorization to the state of Washington for the Forest Practices program under ESA Section 10(a)(1)(B) or Section 4(d). Instead, the state would regulate non-Federal and non-tribal forestlands to avoid take where possible, and the Services would enforce the prohibition against take of listed species through Section 9 of the ESA by prosecuting violations of the ESA, as appropriate.

### **Reasons for Not Selecting Alternative 1**

- 1) Three of the four goals of the FFR may not be reached under Alternative 1, including:
  - To provide compliance with the Endangered Species Act for aquatic and riparian-dependent species on non-Federal and non-tribal forestlands;
  - To restore and maintain riparian habitat on non-Federal and non-tribal forestlands to support a harvestable supply of fish; and
  - To meet the requirements of the Clean Water Act for water quality on non-Federal and non-tribal forestlands.

(The fourth goal, to keep the timber industry economically viable in the state of Washington may be met with Alternative 1).

- 2) The No-Action alternative does not provide protection and conservation for listed, proposed, and unlisted species to the extent intended under ESA Section 10(a)(1)(B) and Section 4(d).
- 3) Funding and stakeholder participation in the Forest Practices program, and particularly in the Adaptive Management program, would likely be reduced under this alternative.
- 4) The forest practices rules, consistent with FFR, are intended to meet water quality standards. With this in mind, and to allow time for the adaptive management process to assist the Forest Practices Board in determining if and when it is necessary to adjust the rules, FFR recommended deferment until 2009 in establishing Total Maximum Daily Load (TMDL) for waters not meeting water quality standards. Under Alternative 1, establishment of TMDLs—a costly and time-consuming process—may be reprioritized and may occur sooner.

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- 5) Without regulatory certainty provided by take authorizations, there may be an increase in conversions of forestland to other non-forest uses that are less compatible with salmon recovery.

### **ALTERNATIVE 3 – NOAA FISHERIES 4(d) LIMIT 13 APPROVAL AND USFWS TAKE EXEMPTION**

Under Alternative 3, the Forest Practices program and rules currently described in chapter 222 of the Washington Administrative Code (WAC) would continue to be implemented and NOAA Fisheries would issue a limit on take prohibitions of threatened species to the Washington State Forest Practices Program under Limit 13 in the existing NOAA Fisheries 4(d) rule (65 FR 42422). The NOAA Fisheries 4(d) rule is described in more detail in Section 1-2 of this document. Alternative 3 would also include the development and adoption of a 4(d) rule by USFWS to authorize take of bull trout.

#### **Reasons Alternative 3 Is Less Desirable than Alternative 2**

- 1) FFR stakeholders would likely provide less support and participation, particularly in the research and monitoring efforts of the Adaptive Management program.
- 2) Alternative 3 does not provide ESA coverage for all listed, proposed and unlisted species requiring protection. The Section 4(d) limit on take prohibitions only applies to threatened species.
- 3) Alternative 3 does not offer long-term regulatory certainty. The Section 4(d) rule limit on take prohibitions can be terminated at any time.
- 4) The “No Surprises” rule is not included under Section 4(d). The “No Surprises” rule is an important element of the Section 10 process that means no additional restrictions or protective measures will be imposed on an HCP permit holder beyond those addressed in the HCP and associated Implementation Agreement. Under “No Surprises,” the Services would not require the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources beyond the level otherwise agreed to in the HCP without the consent of the permittee, as long as the permittee is implementing the terms and conditions of the HCP, Incidental Take Permit and other associated documents in good faith. In light of the June 10, 2004, court ruling in *Spirit of the Sage Council v. Norton*, Civil Action No. 98-1873 (D.D.C.), if any future judicial decision or determination holds that the “No Surprises” assurances rule (or similar successive rule) is vacated, held unenforceable or enjoined for any reason or to any extent, any “No Surprises” assurance provisions in the HCP or related documents would be enforceable only to the degree allowed by any such decision or determination.

### **ALTERNATIVE 4 – INCREASED PROTECTIONS COMPARED TO ALTERNATIVE 2 (THE FPHCP) AND ALTERNATIVE 3 (THE 4(d) TAKE AUTHORIZATION)**

The programs and rules under Alternative 4 would be more restrictive than those approved under Alternatives 2 and 3. This alternative was developed based on public

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comments and internal scoping discussions that identified the need for an alternative that would offer greater protections than Alternatives 2 and 3. Many aspects of this alternative are based on Pollack and Kennard (1998), the Forest Ecosystem Management Assessment Team (1993) and other recommendations from the public.

### **Reasons for Not Selecting Alternative 4**

This alternative would result in a significant economic impact on both industrial and family forest landowners, including higher operating costs for complying with a more restrictive riparian management zone (RMZ), road maintenance and stream crossing rules, foregone sale of timber within a more restrictive riparian management zone and lost employment resulting from lower timber harvests.

The increased RMZ restrictions, with higher operating costs and decreased timber revenue, are more likely to have a greater negative impact on small forest landowners and may result in forestland conversions to non-forest uses.

Because FFR was a consensus-based, collaborative process, it ensures broad stakeholder participation and support in implementing the FPHCP (Alternative 2), including strong support for an effective and successful Adaptive Management program. This broad base of support among stakeholders also allows DNR to compete favorably for funding to implement the FPHCP. More restrictive rules and associated higher costs may result in reduced funding and stakeholder participation in the Forest Practices program, and particularly in the Adaptive Management program

In summary, Alternative 2 (the FPHCP) will likely produce the greatest benefits with respect to the long-term conservation of covered species while maintaining an economically viable timber industry. The FPHCP will receive the strongest support among the parties involved in the development of the FFR and the implementation of the resulting Forest Practices program and rules. Also, in contrast to the other alternatives, the FPHCP is most likely to fulfill all FFR goals by meeting the requirements of the ESA and CWA, by restoring and maintaining riparian habitat to support a harvestable supply of fish and by keeping the timber industry economically viable in Washington. Finally, the FPHCP provides the greatest degree of regulatory certainty for the state of Washington and forest landowners covered by the plan.

## **Conclusion**

The scope and scale of the FPHCP is unprecedented. The spatial extent and diversity of covered lands, the number and varied management objectives of the forest landowners involved and the wide range of species covered make implementation of the FPHCP an exciting challenge for those involved in forestry in Washington. In order to be successful, the FPHCP will require broad support from all parties who have a stake in the management of non-Federal and non-tribal forestlands in the state. One indication of the likelihood for success is the support FFR implementation has received since adoption of the forest practices emergency rules in mid-2000. Since that time, the Forest Practices program has effectively administered forest practices activities across the state, conducted several adaptive management research and monitoring projects, and initiated planning for a comprehensive compliance monitoring program. Continued progress and support for these and other efforts is expected following approval of the FPHCP.